

## ***Bankruptcy Cancellation in Indonesia: A Labirin for Curator Fee Execution***

Ronald Hasudungan Sianturi, Prima Indonesia University, Indonesia  
Theresia Simatupang, Prima Indonesia University, Indonesia

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### **Abstract**

This article investigates the application of Article 17 paragraph ( 2 ) of Law No. 37 of 2004 on Bankruptcy and Suspension of Payment (“Bankruptcy Act“) in Indonesia. Article 17 paragraph (2) Bankruptcy Act states that the Supreme Court have to set curator fee in case of bankruptcy cancellation petition granted. This research indicate that The Supreme Court Verdict which does not specify the amount of curator fee as mandated by Article 17 paragraph (2) Bankruptcy Act. The research also found that curator applying curator fee determination to the Commercial Court if The Supreme Court Verdict which does not specify the amount of curator fee. Curator fee determined by the commercial court is contrary to Article 17 paragraph (2) Bankruptcy Act which states the absolute competence of the Supreme Court to set curator fee in case of bankruptcy cancelation. This research provides solutions to protection curator fee is not specified Supreme Court without violating Article 17 paragraph (2) Bankruptcy Act.

**Keywords:** bankruptcy cancelation, commercial court, curator fee, Indonesia, supreme court

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## Introduction

Indonesia bankruptcy regulation when Dutch colonialization period was *Staatsblad* 1905 No. 217 and *Staatsblad* 1906 No. 348 on *Verordening op het Faillissement en Surceance van Betaling*. It was replaced by Law No. 4 of 1998 on Stipulation of Government Regulation No. 1 of 1998 on Bankruptcy. At last, it was replaced by Law No. 37 of 2004 on Bankruptcy and Suspension of Payment (Bankruptcy Act). Bankruptcy Act establish commercial court with bankruptcy jurisdiction that replaced the district court jurisdiction (Tata Wijayanta, 2004).

The Commercial Court establishment is an effort to accommodate the court renewal need that has authority check and decide for bankruptcy cases more quickly, effectively and efficiently after the economic crisis in Indonesia. *When Indonesia crisis Indonesia period, bankruptcy process by district court less effective, less efficient wasting time (Tata Wijayanta, 2010)*. Establishment of commercial courts holds general principles and modern competent, independent and impartial, accountable, participatory, transparent, accessible, quick process and the rule of law. Article 6 Bankruptcy Act have set any quickly insolvency process, such as setting a date for a hearing no later than three (3) days after the bankruptcy petition filed, the petition examination begins no later than 20 (twenty) days from the petition filed, the verdict against the bankruptcy petition shall be made no later than 60 (sixty) days after the bankruptcy petition filed, the decision of a bankruptcy petition submission no later than three (3) days after the date of the decision, management and settlement of the bankruptcy estate process until the appeal is filed no later than 8 (eight) days from the decision of bankruptcy declaration. Simple verification is requirement of the bankruptcy decision under Article 8 paragraph (4) of Bankruptcy as a legal political in order to have bankruptcy by a rapid time frame (Putriyanti, Defiana, E. & Wijayanta, T., 2010).

Bankruptcy proceedings reformation contained in Article 69 Bankruptcy Act which appoints a curator who has the duty to maintenance and / or settlement of the bankruptcy estate after the bankruptcy decision. The curator must be professional with specialized expertise in performing the maintenance and / or settlement of the bankruptcy estate and is registered in Indonesia Ministry of Justice as a curator. Special expertise requirements related to the risks faced in performing their duties, where curator responsible for errors or omissions in performing they tasks that cause harm to bankruptcy property. The curator appointed by the judges of the Commercial Court through bankruptcy verdict and took charge since the date of verdict filed. There are 2 (two) tasks assigned by the commercial court judges to the curator. First, obtaining a bankruptcy estate by way of security for the bankruptcy estate (particularly the bankruptcy estate that can easily be transferred / hidden by the bankrupt debtor such as jewelry, money and other movable goods), data collection and assessment of the bankruptcy estate and the preparation of the list of accounts (including names and places stay of creditors and other types of receivables are comprised of a preferred creditor, the secured creditor and unsecured creditor) (Sularto, 2012). Second, the bankruptcy estate settlement task is to dilute or sell the bankruptcy estate for the repayment of debts to creditors. The bankruptcy estate sales by auction or sales conducted under the approval of the Supervisory Judge hands. After the bankruptcy estate for sale, then divide curator bankruptcy estate in

accordance with the list of accounts with regard to the value of the bankruptcy estate, the amount and type of creditors, bankruptcy costs and benefits services curator.

Bankruptcy process should not end with the settlement of the bankruptcy estate. Bankruptcy Act stated that bankruptcy could end by 4 (four) ways. First, the achievement of peace between the creditor to the debtor bankrupt by paying attention to the prospect of good business debtor bankrupt and unable to repay the debt, the debt settlement creditors do not outweigh peace and peace terms more favorable than the creditor and the debtor does not peace. Secondly, the revocation decision on the declaration of bankruptcy by the judges of the Commercial Court in the case of the bankruptcy estate is not sufficient to pay the cost of bankruptcy (Sjahdeini, 2010). Third, bankruptcy settlement. Fourth, the cancellation of the bankruptcy decision on appeal or judicial review that was published in the Official Gazette of the Republic of Indonesia at least two (2) daily newspapers with national and local scale circulation in the domicile of the debtor. Curator who has carried out his duties to the bankruptcy ends curator entitled to compensation for services regulated by the Regulation of the Minister of Justice of the Republic of Indonesia No.. M.09-HT.05.10 1998, then repealed by Regulation of the Minister of Law and Human Rights No. 01 Year 2013 on Guidelines Rewards For Receivers and Administrators of the date of January 11<sup>th</sup>, 2013.

Curator fee set by the judges of the Commercial Court after the achievement of peace, settlement of the bankruptcy estate bankruptcy or revocation decision by the judges of the Commercial Court. It contrast with the bankruptcy ends because bankruptcy decision cancellation on appeal or reconsideration in accordance with Article 17 paragraph (2) of the Bankruptcy Act stating "The panel of judges also overturned bankruptcy fees bankruptcy and receivership fee". The provisions of Article 17 paragraph (2) of the Bankruptcy Act refers to the Supreme Court overturning bankruptcy.

Determination of fee receivership by the Supreme Court as mandated in Article 17 paragraph (2) of the Bankruptcy Act is very difficult to implement for several reasons. First, examine the Supreme Court appeal on the grounds of the judges of the Commercial Court is not authorized or beyond the limits of authority, misapplied or violated the law or fails to meet the requirements set by the laws and regulations that threaten the negligence resulted in the cancellation of the decision. Therefore, the principal case was not examined again by the Supreme Court so that payment for services not inspected by the curator of the Supreme Court. Second, the process of obtaining a settlement of the bankruptcy estate and is still running at the time of appeal or review of an appeal that can't be determined fee curator. Third, application or reconsideration appeal the decision to revoke the bankruptcy declaration made by the Debtor Bankrupt, resulting in the solicitation may not be listed on the service fee and the cost of bankruptcy receivership. Determination of fee that is not requested by the curator Bankrupt Debtor Bankrupt Debtor must exceed demand. On the other hand, the Supreme Court's decision does not set a fee for curator raises uncertainty of curator who have done his duties as a court order that cut commercial bankruptcy.

## **2. Research Method**

This is a descriptive analytical study in which the authors would describe the legal issues related to the determination of the imposition of a service fee by the curator of

the judges of the Commercial Court in the case of cancellation of the bankruptcy decision by the Supreme Court. The approach used is empirical jurisdiction, ie an approach to a decision by way of judicial notice of the terms of (the rules or norms applicable), and the fact that is actually happening on the ground (empirical).

This study uses primary data and secondary data. Primary data were obtained by collecting an appeal or reconsideration decision issued by the Supreme Court through the official website of the Supreme Court. Secondary was gotten from collecting data which related to the regulation of Indonesian bankruptcy, curator fee, and the law of civil court proceedings in a case of Indonesian Law No. 37 of 2004 on Bankruptcy and Suspension of Payment, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 1 Year 2013 on Guidelines for the Management Benefits and Curator, Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines For PES magnitude of Receivers and Administrators and Civil Law Procedure.

Data analysis was done by categorizing Supreme Court ruling that decided the cancellation of the bankruptcy decision by the commercial court. The data were then analyzed for compliance with Article 17 paragraph (2) Bankruptcy Indonesian Law. The next step in analyzing the legal efforts made to obtain a fee curator according to Indonesian Law and the Civil Law Procedure.

### **3. Discussion**

#### **3.1. The Civil Courts Verdict**

Lilik Mulyadi stated that the judge's ruling can be divided into two types. First, the decision is not a final decision, the judge handed down the verdict before deciding the principal case that aims to facilitate the continuation of proceedings. In this case, the injunction is only temporary and not the decision of the decision and the case remains unfinished. Decision was not a final decision could be the *preparator* decision that the verdict handed down by the judge to prepare and organize examination of the case, for example, establish that the contested decision had not been cut back along with the convention lawsuit; decision of the interlocutor is the decision handed down by the judge proof commands and can affect the principal case, for example, contains a command decision to hear the expert testimony, the verdict on the burden of proof; provisionil verdict was a decision that sets a temporary measure for the benefit of one of the litigants; and incidental decision is the imposition of judgment in relation to the incident, such as the judge's decision to grant the request of either party to call witnesses when the trial took place. Second, the final decision was sentenced with respect to the merits of the case and ends the case on some level. In essence, the final decision can be divided into decision *declaratoir* verdict was a decision handed down by the judge to explain the nature of that enactment of a state law or determine whether or not a situation that otherwise the plaintiff / applicant; constitutive decision is a judge's ruling that establishes a new state law or state law abolished; *condemnatoir* verdict was a judge's ruling that contains condemnation of either party to meet achievement; contradictor decision was a decision handed down by the judge in the case never came to the defendant at the trial even though he was not a member of resistance; *verstek* verdict was a decision handed down in the case of the respondent judge did not attend the hearing despite deserves to be called the facing (Mulyadi, L., 2010).

Decision is the decision of the bankruptcy petition *constitutive* verdict is a judge's ruling that establishes that the defendant be in a state of bankruptcy new law is a state of bankruptcy. In accordance with Article 8, paragraph (5) of the Bankruptcy Act, the judges of the Commercial Court shall decide upon the bankruptcy petition no later than 60 days after the petition is filed. In short period of time causes the judge was forced to be active in the process of proving the bankruptcy petition, for example by limiting the parties' willingness to spend long time for the process responsible for answering and directing the parties to focus on the process of evidence (Wijayanta, T., Aristya, SDF, Basuki, K., Herliana, Halili, H., Sutanato & Supartinah, 2010).

Examining the appeal and judicial review, the Supreme Court in charge of examining *judex fictie* / Central Jakarta Commercial Court if there is an error in the application of the law of Article 17 paragraph (2) and (3) the Bankruptcy Act states that the judges should overturn bankruptcy fees bankruptcy and receivership fee, and then the Supreme Court not only check *judex fictie* but also need to know the maintenance process and settlement of the bankruptcy estate so as to determine the costs and benefits of curator bankruptcy services. It gives rise to difficulties in practice given the Supreme Court does not follow the bankruptcy estate management and settlement conducted by the curator.

In the bankruptcy proceedings in the Commercial Court, the judges who examine and adjudicate the bankruptcy case are not similar to the active judges of the General Court handles civil cases, meaning that the judges of the Commercial Court in dealing with bankruptcy cases from receipt to file with the verdict to be active bankruptcy process because the grace period should pay attention to events that have determined the proceedings for 30 days, with regard to the principle of balance and the evidence that is both simple to achieve the principle of legal certainty, the benefits and appropriateness (Story, 2005).

### **3.2. Execution Fee Determination Receivers in Bankruptcy Canceled Supreme Court Decision Not In accordance with Article 17, Paragraph (2) of Bankruptcy Act**

Bankruptcy proceedings in the first level, management and settlement of the bankruptcy estate and the bankruptcy petition in the Supreme Court and judicial review set forth in the Bankruptcy Act. Article 8, paragraph (5) Bankruptcy Act said states commercial court ordered bankruptcy to decide no later than 60 (sixty) days after the bankruptcy petition is filed. The provisions of Article 13 paragraph (3) of the Bankruptcy Act ordered the Supreme Court to decide an appeal no later than 60 days after the appeal is received by the Supreme Court.

In accordance with Article 16 paragraph (1) of Bankruptcy Act, Curator shall perform their duties to take care of and clean up the bankruptcy estate even though subject to review bankruptcy decision. Curator actions undertaken by the Bankruptcy Act considered valid although in later Supreme Court issued a ruling that overturned the bankruptcy. The curator task can be divided into 2 (two) phases: management and settlement stage where the management of the tasks in coordination with the supervisory judge curators, directors and creditors and other parties involved with bankruptcy (Kurniawan, 2012). Things that do curators to carry out these duties

starting from the announcement of the bankruptcy judge's decision in the Official Gazette and newspapers; saving bankruptcy estate; inventory of the bankruptcy estate; arranging list of debts and receivables bankruptcy estate; continued efforts are declared bankrupt Debtor (with the consent of the creditor committee); give some money to the debtor bankrupt living with his family; keep all money, jewelry, securities and other securities; lend cash that is not required for the maintenance work; make peace or to resolve the matter well; and provide copies of the letters to the creditors at the expense of creditors concerned.

When Bankruptcy Act was drafted, curator fee in carrying out the duties and responsibilities for administration of the bankruptcy estate and the settlement set forth in Decree of the Minister of Justice of the Republic of Indonesia No. M.09-1998 HT.05.10 of magnitude Fee For Receivers and Administrators. Guidelines curator fee stipulated in the Decree of the Minister of Justice has been revoked by Regulation of the Minister of Law and Human Rights No. 01 Year 2013 on Guidelines for Remuneration for the Board of Curators and to change the large number curator fee as follows:

Bankruptcy End	Debtor's Asset	Curator Fee
Reconciliation	Asset < Rp. 50 M	5%
	Next Rp 50 M - 250 M	3%
	Next Rp. 250 M- 500 M	2%
	Above Rp. 500 M	1%
Settlement	Asset < Rp. 50 M	8%
	Next Rp 50 M - 250 M	6%
	Next Rp. 250 M- 500 M	4%
	Above Rp. 500 M	2%
Bankruptcy cancelation by Supreme Court	unregulated	unregulated

Table 1. Curator Fee based on Minister of Law and Human Rights regulation No. 01 of 2013

Article 2 paragraph (1) item c Minister of Law and Human Rights Regulation No. 01 of 2013 also change the loading fee previously charged to the receiver where the debtor into bankruptcy to the applicant. Imposition curator fee to the Minister of Justice and Human Rights No. 01 of 2013 is clearly contrary to Article 17 paragraph (2) in conjunction with subsection (3) Bankruptcy Act Law which states that the fee can be charged to the applicant curator or jointly between the applicant and debtors.

Article 17 Paragraph (2) Bankruptcy Act stated that the Supreme Court is a party that sets the cost of bankruptcy and receivership fee in the event of bankruptcy overturned on appeal or reconsideration. According to curator Andrey Sitanggang that it is very difficult to implement given the Supreme Court does not know how the amount of costs incurred during the process of obtaining a curator and property settlement debtors. Another factor that led to Article 17 paragraph (2) Bankruptcy Act is curator petition to the commercial court judges to set a fee curator.

One curator fee determination that does not comply with Article 17 paragraph (2) of the Determination No. 12/Pailit/2009/PN.Niaga.Smg Jo. No.. 897K/Pdt.Sus/2009 dated August 30, 2010 related to the bankruptcy of PT. Lidi Manunggal Perkasa ("LMP Limited"). Semarang Commercial Court decision through No. 12/Pailit/2009/PN.Niaga.Smg stating LMP Limited bankrupt and appoints Tutut Rokhayatun and Andrian Kusumawardana as Curators. Follow the decision of the curator immediately carry out his duties as mandated by Bankruptcy Act. The verdict, LMP Limited appealed to the Supreme Court case No. 897K/Pdt.Sus/2009 and on May 3, 2010 the Supreme Court gave judgment in cassation that states as follows: To grant the Applicant's appeal of Cassation: LMP Limited; Commerce's decision to cancel the Semarang Commercial Court No. 12/PAILIT/2009/PN.NIAGA.SMG; Declare the Semarang Commercial Court was not authorized to try the case; Punish the Respondent Cassation to pay court costs in all levels of the judiciary, which in this appeal is Rp 5.000.000. The verdict does not meet the formal elements of the specified Article 17 paragraph (2) of the Bankruptcy Act where the judges who overturned the verdict should be set the cost of bankruptcy and receivership fee. In practice, the decision of the Supreme Court followed by a curator with the proposed fee to the judges' curator Bankruptcy Case through Supervisory Judge. Furthermore, the commercial court judges determinate No. 12/Pailit/2009/PN.Niaga.Smg *jo*. No.897K/Pdt.Sus/2009 on Bankruptcy Costs and Benefits Services Curator.

Determination of fee curator that is not in accordance with Article 17 paragraph (2) of the Bankruptcy can also be seen from the bankruptcy of PT. Telekomunikasi Indonesia (Telkomsel). Telkomsel declared bankrupt by the Jakarta Pusat Commercial Court No. 48/PAILIT/2012/PN.Niaga.Jkt.Pst that said (1) grant the petition statement Bankrupt Applicant: PT. Prima Jaya Informatika ("PJI Limited"), in its entirety; (2) Respondent Declared Bankrupt: Telkomsel bankrupt; (3) To appoint and designate Judge Commerce in Central Jakarta Commercial Court as Supervisory Judge in the Bankruptcy Respondent bankruptcy process; (4) To appoint and appoint Br. Ferry Samad S. as Receiver in Bankruptcy Respondent the bankruptcy process; (5) Establish that Fee will be determined later after the Curator finished their duties; (6) To punish the Respondent Bankrupt to pay court costs. The verdict followed by a curator to carry out their duties as mandated by Bankruptcy Act. On the other hand, Telkomsel filed an appeal to the Supreme Court on the application in which the Supreme Court decision No. 704 K/Pdt.Sus/2012 with the following verdict: Judging. Applicant granted the appeal of Telkomsel cassation; Cancel the decision of the Central Jakarta Commercial Court Number: 48/PAILIT/2012/PN.NIAGA.JKT.PST. Refuse Bankruptcy petition in its entirety. The verdict does not meet the decision cancellation formalities bankruptcy under Article 17 paragraph (2) of Bankruptcy Act where the judges who overturned the verdict should be set the cost of bankruptcy and receivership fee. In practice, the decision of the Supreme Court followed by a curator with the proposed fee to the judges' curator Bankruptcy Case. Furthermore, the panel of judges with the Bankruptcy Case Number 48/PAILIT/2012/PN.Niaga.Jkt.Pst *jo* dispense of Determination No. 704 dated January 31, 2013 K/Pdt.Sus/2012 on Bankruptcy Costs and Benefits Services said urator with the following (1) granted the request of the Telkomsel Curator Team for most; (2) Establish Fee bankruptcy Curator PT. Telkomsel is Rp 293,616,000,000 and charged to the Applicant (PJI Limited) and Debtor (Telkomsel) each half part; (3) Establish a charge of bankruptcy in the bankruptcy process Telkomsel of Rp. 240.500.000 and charged to the Applicant

(PJI Limited) and Debtor (Telkomsel) each half is Rp. 120. 250,000; (4) This determination is valid until completed.

In principle, the procedural law applicable to the Commercial Court is the law of civil procedure applicable in general unless otherwise stipulated in the Law on the Bankruptcy Act, as stipulated in article 299 of Bankruptcy Act which states "Except as otherwise provided in this Act the law applicable event is the Civil Procedure Code". The provision is intended when the law does not regulate by Bankruptcy Act on a matter concerning certain events of bankruptcy filing and examination of the case in and by the courts, then that should be referred is HIR and the provisions of other laws applicable in the Civil Procedure Code.

Execution fee-setting receiver in bankruptcy has been annulled by the Supreme Court under Article 17 paragraph (2) in conjunction with subsection (4) of Bankruptcy Act stating that the panel of judges also overturned bankruptcy fees and compensation for services where implementation Curator bankruptcy costs and benefits payment services based on the determination of the execution Curator of President of the Court issued the request of the Receiver. The provisions of Article 17 paragraph (2) in conjunction with subsection (4) of the Bankruptcy Act explicitly asserted that the curator for services performed by the determination of execution issued by the Chairman of the Court at the request of the Receiver to execute curator fee determined by the Supreme Court in the decision to cancel bankruptcy decision. Basic President of the Court issued an order for execution fee canceled curator in bankruptcy is not a decision of the Supreme Court and the judges of the Commercial Court Determination.

### **3.3. Remedies Against Fee Determination Receivers in Bankruptcy Canceled Supreme Court Decision Not In accordance with Article 17 paragraph (2) Bankruptcy Act**

The provisions of Article 299 of Bankruptcy Act that the procedural law applicable in the case of bankruptcy refers to the civil law, except those things specifically regulated. In accordance with Article 1868 of the Civil Code states that "An authentic deed is a deed made in the form prescribed by law, by or in the presence of public servants to the ruling was made in the deed." Article 1868 of the Civil Code indicates that the determination of compensation for services must be made in accordance with the curator of the law in order to form an authentic act by which the competent authorities in accordance with Article 17 paragraph (2) of the Bankruptcy Act the authority to determine compensation for services in the event of bankruptcy receivership is canceled Supreme Court. The practice is common that the establishment of the Commercial Court issued a curator fee in the event of bankruptcy annulled by the Supreme Court. This of course is very detrimental to the service fee is charged to cover the curator. Therefore, those who feel aggrieved over such determination may take several attempts choice of law. The first option by filing a regular civil suit. In this case the party who feels aggrieved applicant to act as plaintiff and as defendant pulled. In the lawsuit using a starting point the proposition that the legal relationship that exists between the plaintiffs on the issue of self-petitioner in the petition filed. In this case, the legal relationship between the debtor and creditor is the curator (as a determination of the applicant).



The second option, file a Request for Cancellation of Determination to the Supreme Court by using the Supreme Court Determination. 5 Pen/Sep/1975 as precedent. This case stems from the issuance of Determination Central Jakarta District Court. 274/1972 are to (1) declare valid the GMS; (2) To declare that no binding agreement made Forest Products Group Corp.. Ltd.. of such designation, those who feel harmed cancellation request to the Supreme Court. Follow the Supreme Court's determination of the Supreme Court issued a Determination. 5 Pen/Sep/1975 which granted the request to cancel the Central Jakarta District Court Decision No.. 274/1972 with consideration of (1) is *declaratoir statement* about the legitimacy of the AGM and the board of management and the agreement does not bind through voluntary lawsuit against the principle of processual; (2) In the processual, determination voluntair PN imposed in this case should be based on a lawsuit contentiosa; and (3) Jurisdiction voluntary only valid if it is prescribed by law.

Third option, filed a judicial review remedies can also be taken to correct and straighten out the mistake as the implementation of *ius contra legem* (Gunarto, 2009). Request of observation Back can use the Review Decision No.1 PK/Ag/1990 dated January 22, 1991 as a precedent. The case stems from Heirs Determination and distribution of the estate issued by the religious court by petition Pandeglang heirs. Against such determination, other heirs filed a judicial review to the Supreme Court where the Supreme Court through Decision No.1 PK/Ag/1990 dated January 22<sup>nd</sup>, 1991 confirms (1) lawsuit voluntary only acceptable to the court if there is a provision specifically governing law; (2) In the case of heirs and distribution of the estate has no legal basis for voluntary examined. Similarly, the examination request fee curator conducted by the Commercial Court in the case of bankruptcy annulled by the Supreme Court.

## **Conclusion**

Determination curator fee in the event of bankruptcy at the end due to the cancellation of Appeal or judicial review has clearly regulated in Article 17 paragraph (2) of The Bankruptcy Act where the judges canceled bankruptcy receivership fee. In practice the Supreme Court's decision which is subject to Article 17 paragraph (2) Bankruptcy Act. Decisions that do not include fees curators encourage curators to apply for a determination of the fee to the curator of the judges of the Commercial Court (first level). However, the determination of compensation for curator services ended in bankruptcy annulled by the Supreme Court as issued by the Commercial Court cannot be executed because it has no legal basis and is contrary to Article 17 paragraph (2) of the Bankruptcy Act. To protect its rights, remedies curator have the option either (1) a regular civil suit; (2) the determination of the cancellation request to the Supreme Court and (3) submit reconsideration remedies.

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**Contact email:** [hasudungan\\_r@yahoo.com](mailto:hasudungan_r@yahoo.com)